IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1110

DON VESTAL, ET AL,
Petitioners,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL,
Respondents

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter "International " or "International Union")[1]

[1] Although the complaint in the trial court was styled *Don Vestal, et al* v. *James R. Hoffa, et al* (see Petition, Appendix II, p. 22), the only real respondent-in-interest is the International Union. Petitioners voluntarily non-suited two institutional defendants, Petition, Appendix II, pp. 23-24; the trial court dismissed as to five individual defendants, including Mr. Hoffa, for lack of service, Petition, Appendix II, p. 24; and the trial court granted no relief against the three remaining individual defendants, Petition, Appendix II, pp. 42-46.

and the other respondents oppose the issuance of a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Sixth Circuit. That decision and judgment, entered December 3, 1971, reversed the judgment of the United States District Court for the Middle District of Tennessee and ordered the trial court to enforce an internal union trusteeship imposed by the International Union over Teamsters, Chauffeurs, Helpers and Taxicab Drivers Local 327 of Nashville, Tennessee (hereafter "Teamsters Local 327"). Petition, Appendix I, p. 1.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 451 F.2d 706 and is reprinted as Appendix I to the Petition for Certiorari. The opinion of the District Court is found at 329 F.Supp. 801 and is printed as Appendix II to the Petition for Certiorari.

QUESTION PRESENTED

Petitioners beg the question when they assert that the question presented is whether the General President of the International Union could delegate his powers and duties to the General Vice President "when such delegation was contrary to the Constitution of the [Union] and when the delegation violated the provisions of. [applicable law]." Petition, p. 2. The question, as phrased by the Court of Appeals, was:

> "*The sole question* in this appeal *is whether General President James R. Hoffa had the right under the Constitution* of the International [Union] *to delegate authority* to General Vice President Frank E. Fitzsimmons *to impose a trusteeship* over its Local Union 327 of Nashville, Tennessee." Petition, Appendix I, p. 15. (Emphasis supplied)

Respondents adopt the question as phrased by the Court of Appeals.

The question presented is whether the General Vice President of the International, acting under a delegation of authority from the General President and under the provisions of the Union Constitution and Title III of the Labor Management Reporting and Disclosure Act of 1959, could impose an internal union trusteeship over Teamsters Local 327 to protect the members of that local union from financial wrongdoing of the most

STATEMENT OF THE CASE

James R. Hoffa was re-elected as General President of the International Brotherhood of Teamsters at its Convention in July 1966. A. 40.[2] At the same Convention, the delegates created the new post of General Vice President, A. 40, and unanimously elected Frank E. Fitzsimmons to that post. A. 40; and see Petition, Appendix I, p. 18. The delegates to the 1966 Convention,[3] aware that Mr. Hoffa faced the potential of imprisonment as a result of certain criminal charges then on appeal, sought to provide continuity of leadership by enacting Article IX, § 2 of the 1966 Constitution which read as follows:

> "The General Vice President shall assume such duties and perform such functions as may be delegated to him by the General President. He shall

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[2] References are to the printed Appendix filed in the Court of Appeals for the Sixth Circuit.

[3] "The International Convention shall be the supreme governing authority of the International Union and shall have the plenary power to regulate and direct the policies, affairs and organization of the International Union." Constitution, Art. III, § 1.

be permitted to maintain such other offices, positions and functions as the General President shall approve."

Petition, Appendix I, p. 18.

On February 28, 1967, less than two weeks prior to his actual incarceration, then General President Hoffa, acting pursuant to Article IX, § 2 of the International Constitution, officially delegated to then General Vice President Fitzsimmons the performance of all the duties and functions of the office of General President, making specific reference in the delegation to Article VI of the International Constitution which included the authority to place affiliated organizations in trusteeship. A. 50. The General Executive Board, meeting on February 28, 1967, concurred in the delegation and determined that such action was in accordance with its interpretation of Article IX, § 2 of the International Constitution.[4] A. 51-52; Petition, Appendix I, p. 19.

By letter dated February 22, 1971, two members of Teamsters Local 327 forwarded to the General Vice President and the General Executive Board of the International a petition signed by more than 400 members of the Local requesting that an emergency trusteeship be imposed over Teamsters Local 327. These members forwarded various documents and papers supporting allegations of serious financial irregularities at Teamsters Local 327 and information concerning various pending lawsuits. A. 43. Several of the incumbent officers of Teamsters Local 327, all of whom had

[4] "The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention." Constitution, Art. IX, § 1.

been elected by secret ballot vote of the local membership, telegraphed the General Vice President requesting an emergency trusteeship. A. 53. Pursuant to Article X, § 10[5] of the International Constitution, the General Vice President instructed an International Auditor to conduct an investigation concerning the allegations of financial irregularities and mismanagement of Teamsters Local 327. A. 55. International Auditor W. W. Teague conducted this investigation in early March 1971 and made a written and oral report both to the General Secretary-Treasurer and to the General Vice President, A. 56, "finding gross irregularities in the conduct of the affairs of the local union." Petition, Appendix I, p. 19. Auditor Teague's report showed that there had been financial malpractice and mismanagement in the administration of Teamsters Local 327 resulting in indebtedness in excess of $200,000; delinquencies in its payment of per capita taxes and other obligations; the borrowing of money from banks on notes guaranteed by an employer with whom the Local Union had contracts; being placed on a "cash only" basis by local merchants, with its automobiles being replevied; entering into collective bargaining agreements which provided for contributions to a non-existent welfare fund for a purpose not permitted by law; the circulation of petitions for withdrawal from the union by members at a time when a number of collective bargaining agreements were open, or would shortly become open, for negotiation; and, finally, the occurrence of violence within the Local Union. A. 56-59.

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[5] "The General President or General Secretary-Treasurer at his discretion may cause the audit or examination of the books of any subordinate body at any time to the extent that he may determine, such audit to be conducted by any person so designated." Constitution, Art. X, § 10(a).

On March 12, 1971, acting pursuant to Article VI, § 5 of the International Constitution, then General Vice President Fitzsimmons imposed an emergency trusteeship over the affairs of Teamsters Local 327, appointed W. C. Smith, an International Organizer and an experienced officer of another local union, as temporary trustee, effective immediately, sent notice of the trusteeship to the appropriate officials of Teamsters Local 327 and to the membership and directed that a hearing be held to determine whether the temporary trusteeship should be continued or whether it should be dissolved. A. 88; see Petition, Appendix I, p. 19. That hearing was held on May 4, 1971 before a panel composed of an International Vice President and the Presidents of two Teamster locals in the southeastern area. The panel, in a lengthy report, unanimously recommended that the trusteeship be continued. A. 163; see Petition, Appendix I, p. 19-20. The panel, upon all the evidence presented to it, concluded that the local union was deeply in debt, a debt which was increasing each year; that there had been highly questionable financial relationships with employers in the Nashville area; grave impropriteites with respect to the spending and borrowing practices of the local union officers; and possible violations of federal law. The panel concluded that "the financial condition of the Local Union is hopeless and that it will continue to deteriorate unless the International Union continues the truseeship." A. 178. The panel also found that the representatives of the local union had been derelict in their duty in processing grievances and in the negotiation and enforcement of collective bargaining agreements. The panel discovered that the officers had not been holding timely general membership meetings and had not been permitting membership ratification of contracts in

conformity with the procedures required by the International Constitution and the local union bylaws. A. 178-182.

The incumbent officers, Don Vestal and others, brought suit in the United States District Court for the Middle District of Tennessee to enjoin the trusteeship and the International cross sued to enforce it. Petition, Appendix I, p. 20.

The trial court heard evidence of the reasons for imposing the trusteeship and received uncontroverted evidence concerning the delegation of powers from General President Hoffa to General Vice President Fitzsimmons. On June 11, 1971, the court issued a Memorandum and Order. A. 135; Petition, Appendix II, p. 22. In its Memorandum, the Court did not address itself to the propriety of the trusteeship, except insofar as it was imposed by the General Vice President rather than by the General President. A. 154; Petition, Appendix II, p. 40. The court addressed itself solely to the narrow question of whether General Vice President Fitzsimmons, rather than General President Hoffa, could properly impose a trusteeship under the provisions of Article VI, § 5 of the International Constitution and concluded that the imposition of a trusteeship was a function of the General President, and the General President alone, and that this function could not properly be delegated under the International Constitution to any other person. Accordingly, for that reason alone, the court concluded that the trusteeship had been imposed in violation of the International Constitution and, therefore, was in violation of 29 U.S.C. § 462, and permanently enjoined the International from continuing the administration

of the trusteeship over Teamsters Local 327. A. 135; Petition, Appendix II, p. 46.

A motion to stay the trial court's order was denied, notice of appeal was filed the same day and an application for stay pending appeal was filed in the Court of Appeals. On June 30, 1971, United States Circuit Judge Paul C. Weick granted the application for a stay and, in so doing, Judge Weick wrote:

> "In my judgment, substantial questions have been raised in the appeal of the International Union which apparently thought it had taken all steps necessary to provide for a continuous operation during Mr. Hoffa's incarceration. Court's are reluctant to substitute their judgment for that of the governing bodies of labor unions in the interpretation of their own constitutions. Furthermore, the status quo should be maintained during the pendency of this appeal.
>
> "The application for a stay is therefore granted, which stay shall continue until further order of the court." A. 194.

The Order of Circuit Judge Weick restored the *status quo ante, i.e.,* the trusteeship over Teamsters Local 327 which had been in effect prior to the District Judge's Opinion and Order. Petitioners filed an "Application to Dissolve the Stay of Judgment" in this Court. That application was presented to the Honorable Hugo L. Black, who returned the application to the Clerk with the following endorsement:

> "Application to dissolve stay denied without prejudice to application to another Justice. Hugo L. Black, July 26, 1971."

A renewed application was presented to the Honorable William O. Douglas and denied by him on August 6, 1971. Petition, Appendix I, p. 20.

Upon full review, the Court of Appeals for the Sixth Circuit held that the delegation of authority from the then General President to the then General Vice President *was* in accordance with the provisions of the International Constitution, the internal governing document of the International, and that the interpretation of that internal governing document by the General Executive Board was both fair and reasonable. Petition, Appendix I, p. 20-21. Accordingly, the Court of Appeals reversed the District Court and remanded the cause to that Court with instructions to enforce the trusteeship. *Id.*

REASONS WHY THE PETITION SHOULD BE DENIED

At issue here is not a contest between officers of the International, seeking either money or power, and officers of a local union dedicated to the membership. Rather, this case demonstrates an effort by the International, acting in accordance with its Constitution and applicable law, to restore to that membership the type of government and representation which the law both contemplates and requires.

It has long been "black letter law" that the Constitution of the Union is a valid contract binding upon the parent union, the local unions and members of local unions who, by virtue of their membership, are members of the International. *Bryan* v. *Theatrical Stage Employees,* 306 S.W.2d 64 (Tenn. Ct. App.), *cert. den.* (Tenn. 1957); *Stettner* v. *International Printing Pressmen and A. U.,* 278 F.Supp. 675 (E.D. Tenn. 1967). This law was recognized and applied in *Cleveland Orchestra Com.* v. *Cleveland Fed. of Musicians,* 303 F.2d 229, 230 (6th Cir. 1962):

> "When one becomes a union member, he agrees to be governed by the union constitution, bylaws

> and rules not inconsistent with rights and procedures established by the Act; and the constitution and bylaws of the union express the terms of the contract which define the privileges secured and the duties assumed by those who become members."

And see *Adams* v. *International Broth. of Boilermakers, Iron Sky Builders, Blacksmith, Forgers & Helpers,* 262 F.2d 835 (10th Cir. 1959).

Included in the provisions of the 1966 International Constitution which were binding upon the petitioners were those relating to the delegation of power from the General President to the General Vice President (Art. IX, § 2) and to the power of the General Executive Board "to interpret and apply the Constitution and laws of the International Union." (Art. IX, § 1)

It is equally well settled that the interpretation of the union's constitution belongs to the governing body of the union itself, and as long as that body does not substitute legislation for interpretation and does not transgress the bounds of reason, common sense or fairness, courts will not intervene. Any reasonable or permissible construction placed by a union upon its own constitution will govern, notwithstanding that a court might have reached a different conclusion. *Green* v. *Obergfell,* 121 F.2d 46 (D.C. Cir. 1941); *English* v. *Cunningham,* 282 F.2d 848 (D.C. Cir. 1960).

Just last term, this Court in *Boilermakers* v. *Hardeman,* 401 U.S. 233, 242-43 (1971), in considering another provision of the Labor Management Reporting & Disclosure Act of 1959, wrote that we "find nothing in either the language or the legislative history . . . that could justify . . . a substitution of judicial for union authority to interpret the union's regulations." This is the rule which has routinely been applied by

the Courts of Appeals. *Green* v. *Obergfell, English* v. *Cunningham,* both *supra; Lewis* v. *American Federation of State, County and Municipal Employees,* 407 F.2d 1185, 1192 (3d Cir. 1969). This was the rule applied by the court below.

Title III of the Labor Management Reporting & Disclosure Act of 1959, 29 U.S.C. § 461, *et seq.,* requires only that a trusteeship be established for a recognized reason and "in accordance with the constitution and bylaws of the organization which has assumed trusteeship." 29 U.S.C. § 462. Neither court has challenged the reason and the Court of Appeals here held that the trusteeship over Teamsters Local 327 had been established in accordance "with the constitution and bylaws of the organization."

There is nothing at all unique, extraordinary or unusual about the decision of the Court of Appeals. It followed long established precedents in the internal union area. It adhered to the ruling of this court in *Boilermakers* v. *Hardeman, supra.*

In a very real sense, moreover, the controversy here can be said to be moot. The question is not whether a trusteeship should have been imposed over Teamsters Local 327. The sole question is whether that trusteeship had to be imposed by the General President or whether the 1966 International Constitution permitted it to be imposed by the person who at that time held the office of General Vice President. Intervening events have seen the election of that person *as the General President.* Petition, Appendix I, p. 21. A decision to invalidate the trusteeship now, upon the narrow technical grounds advanced by Petitioners and rejected by the Court of Appeals that that person did not hold the proper office in the Spring of 1971 when

the trusteeship was imposed, would be to require that very same person, who now holds the office, to perform the simple ritual of reimposing the trusteeship, a foolish exercise which hardly should seem to warrant the intervention of this Court.

CONCLUSION

The respondents respectfully submit that the Court of Appeals for the Sixth Circuit was eminently correct, that it followed well established judicial guidelines, that there is nothing peculiar or extraordinary about this case that would warrant the exercise of this Court's certiorari jurisdiction, and that the petition should be denied.

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